

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

ATTORNEY GENERAL OF THE STATE)	
OF OKLAHOMA, et al.,)	
)	
Plaintiffs,)	
)	CASE NO.: 05-cv-329-GKF(SAJ)
v.)	
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**MOTION OF AMERICAN FARM BUREAU FEDERATION AND NATIONAL
CATTLEMEN’S BEEF ASSOCIATION FOR PERMISSION TO FILE JOINT
BRIEF AS AMICUS CURIAE IN OPPOSITION TO THE PLAINTIFFS’
MOTION FOR PRELIMINARY INJUNCTION AND
INTEGRATED BRIEF IN SUPPORT THEREOF**

COME NOW American Farm Bureau Federation (“AFBF”) and the National Cattlemen’s Beef Association (“NCBA”) and respectfully submit this Motion for Permission to File a Joint Brief as Amicus Curiae in Opposition to the Plaintiffs’ Motion for Preliminary Injunction and Integrated Brief in Support Thereof (*See* Ex. A, Joint Brief of Amicus Curiae American Farm Bureau Federation and National Cattlemen’s Beef Association in Support of Abstention of Federal Jurisdiction). In support of this Motion, AFBF and NCBA say as follows:

1. AFBF is this nation’s largest non-profit general farm organization representing family farmers who produce and raise every type of agricultural crop and commodity in the nation. (*See* Ex. B, Affidavit of Danielle Quist (“Quist Aff.”), ¶3). AFBF is a federation of fifty State Farm Bureaus and Puerto Rico whose members include family farmers in their respective states and Puerto Rico. *Id.* AFBF and State

Farm Bureau's members are independent business and not employees of defendants or other integrated agricultural businesses. *Id.*

2. AFBF's primary function is to advance and promote the interests and betterment of farming, the farming community and the individual families engaged in farming. *Id.*, ¶4. The scope of this effort includes advancing, promoting and protecting the economic, business, social and educational interests of farmers across the United States, as well as participating in reasonable and authorized environmental regulation. *Id.*

3. Both Oklahoma Farm Bureau Federation and Arkansas Farm Bureau Federation are members of AFBF, with members in each state who are poultry growers within the Illinois River Watershed ("IRW"). *Id.*, ¶5. The size and scale of member poultry operations within the IRW ranges widely. *Id.* Most are under a grower contract with one or more of the defendant integrators; a few are independent. *Id.* Moreover, some members are engaged in the application of poultry litter for the purposes of fertilization of crops and forage raised on their own farms and would attest to a benefit to those crops. *Id.*

4. NCBA is the national trade association representing U.S. cattle producers with more than 28,000 individual members and sixty four state affiliate, breed, and industry organization members. (*See* Ex. C, Affidavit of Tamara McCann Thies ("Thies Aff."), ¶3). Together, NCBA represents more than 230,000 cattle breeders, producers, and feeders, all of whom have a stake in maintaining a strong livestock industry which is essential to the nation's economic stability, the viability of many rural communities, and the sustainability of a healthful and high-quality food supply for the American public. *Id.*

5. With offices in Denver and Washington, DC, NCBA is a consumer-focused, producer-directed organization representing the largest segment of the nation's food and fiber industry. *Id.*, ¶4. The U.S. cattle industry currently raises close to 100 million head of cattle. *Id.*, ¶7. Manure from those cattle is beneficially recycled as organic fertilizer and used to produce abundant crops to feed the world. *Id.* Limitations on the use of manure as fertilizer would have severe economic consequences on the industry, would provide no reasonable options for its use, and would unreasonably force NCBA members and others to purchase more expensive synthetic fertilizers that provide no recognizable environmental benefits. *Id.*

6. Both the Oklahoma Cattlemen's Association and the Arkansas Cattlemen's Association are members of NCBA. *Id.*, ¶5. Some members are engaged in the application of poultry litter for the purposes of fertilization of crops and forage raised on their own farms and would attest to a benefit to those crops. *Id.* Similarly, some members operate concentrated animal feeding operations from which cattle manure is collected and beneficially recycled as fertilizer. *Id.*, ¶5.

7. In the case at bar, Plaintiffs' filing of their Motion for Preliminary Injunction and Integrated Brief in Support Thereof has captured the attention of AFBF's and NCBA's members, who have asked that this effort to file an amicus brief be made so that the Court will have the benefit of the position of the poultry and cattle farming communities. (Quist Aff., ¶6; Thies Aff., ¶6). In point of fact, Plaintiff's Motion has captured the attention of the overall livestock agricultural community, due to the impact that the Court's ruling will have on the use of all manure—not just poultry litter—as fertilizer.

8. AFBF and NCBA recognize that participation as an amicus to brief and argue as a friend of the Court is a privilege that lies within the sound discretion of the Court, and depends upon a finding that the proffered information is timely, useful, or otherwise necessary to the administration of justice. *United States v. Michigan*, 940 F.2d 143, 165 (6th Cir. 1991). AFBF and NCBA respectfully suggest that a joint amicus brief from AFBF and NCBA, supporting Defendants, is useful and desirable because AFBF and NCBA have a unique perspective that could aid the Court beyond the help that counsel for the parties are able to provide. AFBF and NCBA believe that the information presented in their amicus brief will not duplicate the arguments made by the Defendants or any other party.

9. Counsel for AFBF and NCBA has conferred with counsel for Plaintiffs and must advise this Court that Plaintiffs object to this motion. Counsel for AFBF and NCBA has also conferred with Defendants' counsel and must advise this Court that Defendants do not object to this motion.

In conclusion, AFBF and NCBA respectfully ask this Court's permission to submit a joint amicus brief in opposition to the Plaintiffs' Motion for Preliminary Injunction.

Respectfully Submitted,

s/Jessica E. Rainey

Barry G. Reynolds, OBA #13202

reynolds@titushillis.com

Jessica E. Rainey, OBA #18296

jrainey@titushillis.com

TITUS HILLIS REYNOLDS LOVE

DICKMAN & MCCALMON

15 E. Fifth St., Ste. 3700

Tulsa, Oklahoma 74103

(918) 587-6800 FAX: (918) 587-6822

Local Associated Counsel

AND

OF COUNSEL:

William S. Cox, III (COX018)

Nikaa B. Jordan (JOR036)

LIGHTFOOT, FRANKLIN & WHITE, L.L.C.

The Clark Building

400 North 20th Street

Birmingham, Alabama 35203-3200

(205) 581-0700

(205) 581-0799 (fax)

Attorneys for Amici Curiae

American Farm Bureau Federation and

National Cattlemen's Beef Association

CERTIFICATE OF MAILING

A. I hereby certify that on this February 15, 2008, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

- **Jo Nan Allen**
jonanallen@yahoo.com,bacaviola@yahoo.com
- **Frederick C Baker**
fbaker@motleyrice.com,mcarr@motleyrice.com,fhmorgan@motleyrice.com
- **Tim Keith Baker**
tbakerlaw@sbcglobal.net
- **Sherry P Bartley**
sbartley@mwsgw.com,jdavis@mwsgw.com
- **Woody Bassett**
wbassett@bassettlawfirm.com
- **Michael R. Bond**
michael.bond@kutakrock.com
- **Douglas L Boyd**
dboyd31244@aol.com
- **Vicki Bronson**
vbronson@cwlaw.com,lphillips@cwlaw.com
- **Paula M Buchwald**
pbuchwald@ryanwhaley.com,dmaple@ryanwhaley.com
- **Louis Werner Bullock**
lbullock@bullock-blakemore.com,bdejong@bullock-blakemore.com,nhodge@bullock-blakemore.com
- **LeAnne Turner Burnett**
burnettl@crowedunlevy.com,ECFT@crowedunlevy.com,kenneyj@crowedunlevy.com
- **A Michelle Campney**
campneym@wwhwlaw.com,steelmana@wwhwlaw.com
- **Michael Lee Carr**
hm@holdenoklahoma.com,MikeCarr@HoldenOklahoma.com
- **Gary S Chilton**
gchilton@hcdattorneys.com
- **Lloyd E Cole , Jr**
colelaw@alltel.net,amy_colelaw@alltel.net,gloriaeubanks@alltel.net
- **Robin S Conrad**
rconrad@uschamber.com
- **Angela Diane Cotner**
AngelaCotnerEsq@yahoo.com
- **Reuben Davis**
rdavis@boonesmith.com
- **Jim DePriest**
jim.depriest@arkansasag.gov
- **John Brian DesBarres**
mrjdbd@msn.com

- **W A Drew Edmondson**
fc_docket@oag.state.ok.us,suzy_thrash@oag.state.ok.us.,drew_edmondson@oag.state.ok.us
- **Delmar R Ehrich**
dehrich@faegre.com,qsperrazza@faegre.com,kcarney@faegre.com,dherber@faegre.com
- **John R Elrod**
jelrod@cwlaw.com,vmorgan@cwlaw.com
- **William Bernard Federman**
wfederman@aol.com,ngb@federmanlaw.com,law@federmanlaw.com
- **Fidelma L Fitzpatrick**
ffitzpatrick@motleyrice.com,lgrande@motleyrice.com
- **Richard C Ford**
fordr@crowedunlevy.com,ECFT@crowedunlevy.com,kenneyj@crowedunlevy.com
- **Bruce Wayne Freeman**
bfreeman@cwlaw.com,lclark@cwlaw.com
- **Ronnie Jack Freeman**
jfreeman@grahamfreeman.com
- **Richard T Garren**
rgarren@riggsabney.com,dellis@riggsabney.com
- **Dorothy Sharon Gentry**
sgentry@riggsabney.com,jzielinski@riggsabney.com
- **Robert W George**
robert.george@kutakrock.com,bethany.wicker@kutakrock.com,sue.arens@kutakrock.com
- **Tony Michael Graham**
tgraham@grahamfreeman.com
- **James Martin Graves**
jgraves@bassettlawfirm.com
- **Michael D Graves**
mgraves@hallestill.com,smurphy@hallestill.com,jspring@hallestill.com
- **Jennifer Stockton Griffin**
jgriffin@lathropgage.com,cshoemaker@lathropgage.com
- **Carrie Griffith**
griffithlawoffice@yahoo.com
- **John Trevor Hammons**
Trevor_Hammons@oag.state.ok.us,Jean_Burnett@oag.state.ok.us,fc_docket@oag.state.ok.us
- **Lee M Heath**
lheath@motleyrice.com
- **Michael Todd Hembree**
hembreelaw1@aol.com,traesmom_mdl@yahoo.com
- **Theresa Noble Hill**
thillcourts@rhodesokla.com,mnave@rhodesokla.com
- **Philip D Hixon**
phixon@mhla-law.com

- **Mark D Hopson**
mhopson@sidley.com,joraker@sidley.com
- **Kelly S Hunter Burch**
kelly_burch@oag.state.ok.us,fc_docket@oag.state.ok.us,jean_burnett@oag.state.ok.us
- **Tina Lynn Izadi**
tina_izadi@oag.state.ok.us,fc_docket@oag.state.ok.us,freda_montgomery@oag.state.ok.us
- **Thomas Janer**
SCMJ@sbcglobal.net,lanaphillips@sbcglobal.net,tjaner@cableone.net
- **Stephen L Jantzen**
sjantzen@ryanwhaley.com,jlee@ryanwhaley.com,mkeplinger@ryanwhaley.com
- **Mackenzie Lea Hamilton Jessie**
maci.tbakerlaw@sbcglobal.net,macijessie@yahoo.com,tbakerlaw@sbcglobal.net
- **Bruce Jones**
bjones@faegre.com,cdolan@faegre.com,dybarra@faegre.com
- **Jay Thomas Jorgensen**
jjorgensen@sidley.com,vshort@sidley.com
- **Krisann C. Kleibacker Lee**
kklee@faegre.com,mlokken@faegre.com
- **Derek Stewart Allan Lawrence**
hm@holdenoklahoma.com,DerekLawrence@HoldenOklahoma.com
- **Raymond Thomas Lay**
rtl@kiralaw.com,dianna@kiralaw.com
- **Daniel Patrick Lennington**
daniel.lennington@oag.ok.gov
- **Jennifer E Lloyd**
jlloyd@bassettlawfirm.com
- **Nicole Marie Longwell**
nlongwell@mhla-law.com,lvictor@mhla-law.com
- **Dara D Mann**
dmann@faegre.com,jrock@faegre.com,ekim@faegre.com
- **Linda C Martin**
lmartin@dsda.com,mschooling@dsda.com
- **Archer Scott McDaniel**
smcdaniel@mhla-law.com,jwaller@mhla-law.com
- **Thomas James McGeady**
tjmcgeady@loganlowry.com
- **Robert Park Medearis , Jr**
medearislawfirm@sbcglobal.net
- **James Randall Miller**
rmiller@mkblaw.net,clagrone@mkblaw.net
- **Craig A Mirkes**
cmirkes@mhla-law.com,jwaller@mhla-law.com
- **Charles Livingston Moulton**
Charles.Moulton@arkansasag.gov,Kendra.Jones@arkansasag.gov

- **Mark Richard Mullins**
richard.mullins@mcafeetaft.com,allison.mack@mcafeetaft.com
- **Robert Allen Nance**
rnance@riggsabney.com,jzielinski@riggsabney.com
- **William H Narwold**
bnarwold@motleyrice.com,imoll@motleyrice.com
- **John Stephen Neas**
steve_neas@yahoo.com
- **George W Owens**
gwo@owenslawfirmmpc.com,ka@owenslawfirmmpc.com
- **David Phillip Page**
dpag@riggsabney.com,sboudreaux@riggsabney.com
- **Michael Andrew Pollard**
mpollard@boonesmith.com,kmiller@boonesmith.com,pmappin@boonesmith.com
- **Marcus N Ratcliff**
mratcliff@lswsl.com,sshanks@lswsl.com
- **Robert Paul Redemann**
rredemann@pmrlaw.net,psmith@pmrlaw.net
- **Melvin David Riggs**
driggs@riggsabney.com,jsummerlin@riggsabney.com
- **Randall Eugene Rose**
rer@owenslawfirmmpc.com,ka@owenslawfirmmpc.com
- **Michael G Rousseau**
mrousseau@motleyrice.com,lgrande@motleyrice.com
- **Patrick Michael Ryan**
pryan@ryanwhaley.com,jmickle@ryanwhaley.com,amcpherson@ryanwhaley.com
- **Robert E Sanders**
rsanders@youngwilliams.com
- **David Charles Senger**
dsenger@pmrlaw.net,ecf@pmrlaw.net
- **Jennifer Faith Sherrill**
jfs@federmanlaw.com,ngb@federmanlaw.com,law@federmanlaw.com
- **Michelle B Skeens**
hm@holdenokla.com,mskeens@holdenokla.com
- **William Francis Smith**
bsmith@grahamfreeman.com
- **Leslie Jane Southerland**
ljsoutherlandcourts@rhodesokla.com,mnave@rhodesokla.com
- **Monte W Strout**
strout@xtremeinet.net
- **Texas Association of Dairymen**
richard.mullins@mcafeetaft.com
- **Texas Cattle Feeders Association**
richard.mullins@mcafeetaft.com
- **Texas Farm Bureau**
richard.mullins@mcafeetaft.com

- **Texas Pork Producers Association**
richard.mullins@mcafeetaft.com
- **Erin Walker Thompson**
Erin.Thompson@kutakrock.com
- **Paul E Thompson , Jr**
pthompson@bassettlawfirm.com
- **Colin Hampton Tucker**
chtucker@rhodesokla.com,scottom@rhodesokla.com
- **John H Tucker**
jtuckercourts@rhodesokla.com,gbarber@rhodesokla.com,lwhite@rhodesokla.com
- **Kenneth Edward Wagner**
kwagner@lswsl.com,sshanks@lswsl.com
- **Todd P Walker**
twalker@faegre.com
- **Elizabeth C Ward**
lward@motleyrice.com
- **Sharon K Weaver**
sweaver@riggsabney.com,lpearson@riggsabney.com
- **Timothy K Webster**
twebster@sidley.com,jwedeking@sidley.com
- **Terry Wayen West**
terry@thewestlawfirm.com
- **Dale Kenyon Williams , Jr**
kwilliams@hallestill.com,smurphy@hallestill.com,jspring@hallestill.com
- **Edwin Stephen Williams**
steve.williams@youngwilliams.com
- **Douglas Allen Wilson**
Doug_Wilson@riggsabney.com,jsummerlin@riggsabney.com
- **P Joshua Wisley**
jwisley@cwlaw.com
- **J Ron Wright**
ron@wsfw-ok.com,susan@wsfw-ok.com
- **Elizabeth Claire Xidis**
cxidis@motleyrice.com
- **Lawrence W Zeringue**
lzingue@pmrlaw.net,scouch@pmrlaw.net

B. I hereby certify that on February 15, 2008, I served the foregoing document by US Mail, postage prepaid, on the following who are not registered participants of the ECF System

Justin Allen
Office of the Attorney General
(Little Rock)
323 Center St
Ste 200
Little Rock, AR 72201-2610

Randy Allen
Route 1, Box 477
Jay, OK 74346

Jim Bagby
RR 2, Box 1711
Westville, OK 74965

David Gregory Brown
Lathrop & Gage LC
314 E HIGH ST
JEFFERSON CITY, MO 65101

Certain Poultry Growers
320 South Boston Avenue
Suite 400
Tulsa, OK 74103-3708

Gordon W. Clinton
23605 S GOODNIGHT LN
WELLING, OK 74471

Susann Clinton
23605 S GOODNIGHT LN
WELLING, OK 74471

Eugene Dill
P O BOX 46
COOKSON, OK 74424

Marjorie Garman
5116 Highway 10
Tahlequah, OK 74464

James C Geiger
address unknown
,

Thomas C Green
Sidley Austin Brown & Wood LLP
1501 K ST NW
WASHINGTON, DC 20005

G Craig Heffington
20144 W SIXSHOOTER RD
COOKSON, OK 74427

Cherrie House
P O BOX 1097
STILWELL, OK 74960

William House
P O BOX 1097
STILWELL, OK 74960

**John E. and Virginia W. Adair
Family Trust**
RT 2 BOX 1160
STILWELL, OK 74960

Dorothy Gene Lamb
Route 1, Box 253
Gore, OK 74435

James Lamb
Route 1, Box 253
Gore, OK 74435

Jerry M Maddux
Selby Connor Maddux Janer
P O BOX Z
BARTLESVILLE, OK 74005-5025

Doris Mares
P O BOX 46
COOKSON, OK 74424

Dustin McDaniel
Office of the Attorney General
(Little Rock)
323 Center St
Ste 200
Little Rock, AR 72201-2610

Jonathan D Orent
Motley Rice LLC (Providence)
321 S MAIN ST
PROVIDENCE, RI 02940

Donna S Parker
34996 S 502 RD
PARK HILL, OK 74451

Richard E Parker

34996 S 502 RD
PARK HILL, OK 74451

Victor E Schwartz

Shook Hardy & Bacon LLP (Washington
DC)
600 14TH ST NW STE 800
WASHINGTON, DC 20005-2004

Cary Silverman

Shook Hardy & Bacon LLP (Washington
DC)
600 14TH ST NW STE 800
WASHINGTON, DC 20005-2004

C Miles Tolbert

Secretary of the Environment
State of Oklahoma
3800 NORTH CLASSEN
OKLAHOMA CITY, OK 73118

Gary V Weeks

Bassett Law Firm
P O Box 3618
Fayetteville, AR 72702

Robin L. Wofford

Rt 2, Box 370
Watts, OK 74964

/s/Jessica E. Rainey